# Comment on Recent Cases

**Bankruptcy: Life Insurance Policy as an Asset in Trustee's Hands.**—The Supreme Court of the United States in the case of Burlingham v. Crouse,[1] decided April 28, 1913, held that a life insurance policy of a bankrupt, termed a "guaranteed cash value, limited payment policy," will not pass to the trustee as an asset under Sec. 70a Sub. 5, of the Bankruptcy Act of 1898,[2] if the same has no cash surrender value. The point decided had caused much controversy and was the subject of many conflicting decisions.

Section 70a reads: "The trustee of the estate of the bankrupt........ shall be vested by operation of law with the title of the bankrupt, as of the date he was adjudged a bankrupt, except in so far as it is to property which is exempt, to all................ property which prior to the filing of the petition he could by any means have transferred or which might have been levied upon and sold under judicial process against him: Provided, That when any bankrupt shall have any insurance policy which has a cash surrender value payable to himself, his estate, or personal representatives, he may, within thirty days after the cash surrender value has been ascertained and stated to the trustee by the company issuing the same, pay or secure to the trustee the sum so ascertained and stated, and continue to hold, own, and carry such policy free from the claims of the creditors participating in the distribution of his estate under the bankruptcy proceedings; otherwise the policy shall pass to the trustee as assets."

The authorities have placed two constructions upon this section. One line[3] favors the view that only policies having a cash surrender value pass to trustee; the other,[4] conceding this view, holds that policies which have no surrender value pass to the trustee under the language of 70a immediately preceding the proviso.

The insured in Burlingham v. Crouse was a member of a firm to whom he had assigned his policies. The firm realized a loan upon them from the insurer and subsequently assigned them to the defendant who paid the premiums owing. The firm and the insured were adjudged bankrupts. The bankrupt died five days after the trustees were elected. It appeared that the cash surrender value was

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[1]. Burlingham v. Crouse, (1913) 228 U. S. 459; 33 Sup. Ct. Rep. 564.

[2]. Bankruptcy Act of July 1, 1898, 30 Stat. at L. 565; Chap. 541, U. S. Comp. Stat. Supp. 1911, p. 1511; Fed. Stat. Ann. Supp 1912, p. 457.

[3] Re Josephson, (1903) 121 Fed. 142; Gould v. N. Y. L. Ins. Co. (1904) 132 Fed. 927; Morris v. Dodd, (1900) 110 Ga. 606, 36 S. E. 83, 50 L. R. A 33.

[4] Re Slinghuff, (1900) 106 Fed. 154; Re Welling, (1902) 51 C. C. A. 151; 113 Fed. 189; Re Coleman (1905) 69 C. C. A. 496; 136 Fed. 818.

absorbed by the lien of the insurer and, therefore, the policies did not pass to the trustees as assets.

It is not essential that a policy should expressly provide for a cash surrender value; it is sufficient if the insurance company has a recognized rule for such determination and would be willing to pay such value.[5] It is well settled that a court of bankruptcy respects State exemption laws[6] and these are preserved by the preliminary clause of 70a, which excepts them from its operation: Therefore, policies not subject to State process are immune from trustee process under 70a.

Conflicting interpretations of this statute result from the fact that the courts have been unable to agree upon the Congressional intent; some hold that it is legislation designed primarily for the bankrupt's protection, others, that it is essentially a creditor's benefit. The true law, as pointed out in the principal case, is that its beneficial operation was intended to be mutual.

Appellant in substance said, Should not the proceeds of the policies be considered assets in the trustee's hands, since, at the time of the filing of the petition they had no cash surrender value, and therefore there was nothing upon which the proviso could operate? The court answers the question in the negative, remarking, "that the purpose of the proviso was to confer a benefit upon the insured bankrupt by limiting the character of the interest in a non-exempt life insurance policy which should pass to the trustee, and not to cause such a policy when exempt to become an asset of the estate." The trustee is entitled only to the cash surrender value, and when the insured of a non-exempt policy complies with the condition imposed the policy remains his property.

Everett v. Judson[8] and Andrews v. Partridge,[9] decided upon the same day as the principal case apply its doctrine.

In these cases the insured bankrupts died after the filing of involuntary petitions against them, but before adjudication and their representatives served notice upon the trustees that they claimed the right to pay the cash surrender value and retain the policy's proceeds. The trustees contended that the bankruptcy act vested the title to the property in them as of the time of the adjudication and that the deaths occurring before adjudication made the proceeds of the policies assets in their hands. The court, in holding that the date of adjudication was not the time to ascertain the trustee's vested interests, departs from the letter of this section and construes it by reference to other provisions of the Bankruptcy Act. Reasons for

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5 Equit. L. Ins. Co. v. Miller, (1911) 185 Fed. 98; 25 Am. Bank Rep. 560; Hiscock v. Mertens, (1907) 205 U. S. 202.

6 See 76 Bankruptcy Act of July 1, 1898.

7 Holden v. Stratton, (1905) 198 U. S. 202; Re Carlin, (1911) 189 Fed. 815; 27 Am. Bank. Rep. 18.

8 Everett v. Judson, (1913) 228 U. S. 474; 33 Sup. Ct. Rep. 568.

9 Andrews v. Partridge, (1913) 228 U. S. 479; 33 Sup. Ct. Rep. 570.

fixing the time as of the date when the petition is filed are, first, the schedule that the bankrupt is required to file, showing the location and value of his property, must be filed with his petition; secondly, the bankrupt's discharge from all provable debts and claims dates from the time the petition is filed; and, lastly, after the filing of the petition a creditor cannot obtain a lien upon the bankrupt's property which would defeat the general purpose of the law.[10] It follows, therefore, that the property in the policies, excluding the cash surrender value, is in the bankrupt's estate and is not an asset in the trustees' hands.
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**Bills and Notes: Effect on Negotiability of Provision for Increased Rate of Interest after Maturity.**—A negotiable promissory note must be for a sum certain, and the promise to pay unconditional, according to the rule of the common law. To this effect, also, are sections 3087 and 3088 of the California Civil Code, which provide that a negotiable instrument must be for the payment of a certain sum of money and without any condition not certain of fulfillment. In connection with the question of the effect of a provision for an increased rate of interest after maturity on the negotiability of a note, the Supreme Court of Oklahoma has recently considered the statutory provisions of that state, which are almost identical with the sections referred to in our own Civil Code. The Oklahoma court held[1] that the provision for an increased rate of interest after maturity did not offend against the rules of certainty laid down by the statutes, and that the note was a negotiable instrument. In so holding, the court is apparently in accord with the weight of authority.[2] By providing that a note shall bear a greater rate of interest after maturity if not paid at that time, no more uncertainty is created than necessarily exists in the case of any note with interest. Any note may run on if not paid at maturity, and continue to bear interest. Clearly no added uncertainty is created by a mere change in the rate which will operate after maturity, in case the note does run on.

Stipulations differing but slightly from that for an additional rate of interest after maturity, providing, for example, that a higher rate of interest will be effective from the original date in case of non-payment at maturity, or that a specified discount will be allowed in case of payment before maturity, have however, met with a decided difference of opinion as regards their effect on a note's negotiability. One line of cases takes the position that such provisions render the amount payable uncertain and dependent upon the contingency of

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[10] Acme Harvester Co. v. Beekman Lumber Co. (1911) 222 U. S. 308.

[1] Citizens' Bank v. Landis, (1913) 132 Pac 1101.

[2] Towne v. Rice, (1877) 122 Mass. 67; Merril v. Hurley, .1895) 6 S. D. 592, 62 N. W. 958; De Hass v. Roberts, (1894) 59 Fed. 853; Hollinshead v. Stuart, (1898) 8 N. D. 35, 77 N. W. 89, 42 L. R. A. 659; Contra, Cornish v. Woolverton, (1905) 32 Mont. 456, 81 Pac. 4.